tional political convention is to nominate that party's candidate for President. It cannot seriously be contended that in choosing this candidate the Republican National Convention or its delegates should be or will be sensitive to the wishes of all persons in every state on an equal basis. Quite clearly, responsible representation by the delegates to the convention, in choosing a candidate, may require a delegate to vote for a candidate whose views are diametrically opposed to those of a great many persons from the particular state he represents. A claim that these people should be equally represented at the convention misses entirely the purpose and function of a national political convention.

As this Court has stated, "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious." *Avery* v. *Midland County,* 390 U.S. 474, 484 (1968). There is nothing arbitrary or invidious in a political delegate allocation formula which distinguishes between citizens on the basis of their political persuasions.

It is difficult, or perhaps impossible, to specify accurately who the delegates to the national convention really represent. They might be said to represent the Republicans within any particular state who did, or were entitled to, participate in the initial delegate selection process. Typically, this would be the enrolled Republicans within the State, at least in those states which have party enrollments. On the other hand it can equally well be argued that the delegates to the Republican National Convention represent only those Republicans who actively participate in party affairs and resolutely support the party's candidate and its philosophy. At the other extreme, it could be said that

the delegates do not represent people from any particular state, but rather have a national constituency as will the candidate they choose in the event he is elected.

The only point which can be made with certainty is that the delegates do not, and are not intended to, equally represent all of the people.

Any system of allocation of political delegates on the basis of total population would give "the same number of representatives to unequal numbers of constituents", and would offend the standards of equal protection. *Reynolds* v. *Sims*, 377 U.S. 533, 563 (1964). If each state were to have at a Republican National Convention, a number of delegates based on the state's population, the states with low Republican population would be over-represented and the states with a high Republican population would be under-represented.

II.

The Court below was clearly correct in not granting declaratory and injunctive relief.

Petitioners urge that once the court found a justiciable question, it should not deny relief simply because the Petitioners sought reapportionment of delegates on a clearly inappropriate population basis.

Petitioners presented evidence showing that if population and only population were the proper standard for allocation, then Respondent's formula results in a malapportionment. However, the court found that total population was not the proper basis. Petitioners have not claimed or demonstrated any malapportionment to exist on the basis of any other test which the court might find proper.

There being no showing that the Respondents' allocation formulas cause a deviation from any proper standard, there is no reason for the court to grant relief. There is nothing in the Record showing any relief is required.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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September, 1971

Rules Adopted by Republican National Convention Held at Miami Beach, Florida, August 5, 1968

MEMBERSHIP IN THE NEXT NATIONAL CONVENTION

Rule No. 30

The membership of the next National Convention shall consist of:

A. Delegates at Large

1. Four (4) Delegates at Large from each of the fifty (50) States.

2. Two (2) additional Delegates at Large for each Representative at Large in Congress from each State.

3. Nine (9) Delegates at Large for the District of Columbia and three (3) additional Delegates at Large for the District of Columbia if it casts its electoral vote, or a majority thereof, for the Republican Nominee for President in the last preceding Presidential election.

4. Six (6) additional Delegates at Large from each State casting its electoral vote, or a majority thereof, for the Republican nominee for President in the last preceding Presidential election. If any State does not cast its electoral vote or a majority thereof for the Republican nominee in the last preceding Presidential election, but at that election or at a subsequent election held prior to the next Republican National Convention elects a Republican United States Senator or a Republican Governor or a Republican majority of the State's membership in the United States House of Representatives then in such event such State shall be entitled to such additional Delegates at Large.

5. Five (5) Delegates at Large for Puerto Rico, and three (3) Delegates at Large for the Virgin Islands, and three (3) Delegates at Large for Guam.

B. District Delegates

1. One (1) District Delegate from each Congressional District casting four thousand (4,000) votes or more for the Republican nominee for President or for any elector pledged to vote for the Republican nominee for President in the last preceding Presidential election, or for the Republican nominee for Congress in the last preceding Congressional election.

2. One (1) additional District Delegate for each Congressional District casting twelve thousand five hundred (12,500) votes or more for the Republican nominee for President or for any elector pledged to vote for the Republican nominee for President in the last preceding Presidential election, or for the Republican nominee for Congress in the last preceding Congressional election.

C. Alternate Delegates

One (1) Alternate Delegate to each Delegate to the National Convention.

ELECTION OF DELEGATES TO NATIONAL CONVENTION

Rule No. 31

Delegates at Large to the National Convention and their Alternates and Delegates from Congressional Districts to the National Convention and their Alternates shall be elected in the following manner:

(a) By primary election in accordance with the applicable laws of such States as required by law, the election of Delegates to National Conventions of political parties by direct primary and in the District of Columbia in accordance with its law; provided, that in any of these in which Republican representation upon the Board of Judges or Inspectors of Elections for such primary election is de-

nied by law, Delegates and Alternates shall be elected as hereinafter provided.

(b) By Congressional District or State Conventions, as the case may be, to be called by the Congressional District or State Committees, respectively. Notice of the Call for any such Convention shall be published in a newspaper or newspapers of general circulation in the Congressional District or State, as the case may be, not less than fifteen (15) days prior to the date of said Convention; provided, however, that in selecting Delegates and Alternates to the National Convention, no State law shall be observed which hinders, abridges, or denies to any citizen of the United States, eligible under the Constitution of the United States, to the office of President or Vice President, the right or privilege of being a candidate under such State law for the nomination for the President or Vice President; or which authorizes the election of a number of Delegates or Alternates from any State to the National Convention different from that fixed in these Rules.

(c) By the Republican State Committee or Governing Committee in any State in which the law of such State specifically authorizes the election of Delegates or Alternates in such manner.

(d) In a Congressional District where there is no Republican Congressional Committee, the Republican State Committee shall issue the Call and make said publication.

(e) All Delegates from any State may be chosen from the State at Large, in the event that the laws of the State in which the election occurs, so provide.

(f) Alternate Delegates shall be elected to said National Convention for each unit of representation equal in number to the number of Delegates elected therein and shall be chosen in the same manner and at the same time the Delegates are chosen; provided, however, that if the law of any State shall prescribe the method of choosing Alternates they shall be chosen in accordance with the provisions of the law of the State in which the election occurs.

(g) The election of Delegates and Alternates from the District of Columbia, Puerto Rico, the Virgin Islands and Guam shall be held under the direction of the respective recognized Republican Governing Committee therein in conformity with the Rules of the Republican National Committee or the laws of the District of Columbia, Puerto Rico, the Virgin Islands and Guam.

(h) Election of Delegates shall be certified in every case where they are elected by Conventions, by the Chairman and Secretary of such Conventions respectively and in case of election by primary, they shall be certified by the proper official, and all certificates shall be forwarded by said duly elected Delegates and Alternates in the manner herein provided.

(i) All Delegates or Alternates shall be elected not later than thirty-five (35) days before the date of the meeting of said National Convention, unless otherwise provided by the laws of the State in which the election occurs.

(j) Delegates and Alternates at Large to the National Convention shall be duly qualified voters of their respective States.

(k) Delegates and Alternates to the National Convention, representing Congressional Districts, shall be residents and qualified voters in said districts respectively.

ELECTION OF DELEGATES TO DISTRICT AND STATE CONVENTIONS

Delegates to Congressional District and State Conventions shall be elected under the following rules:

(l) Only legal and qualified voters shall participate in a Republican primary, caucus, mass meeting, or mass convention held for the purpose of selecting Delegates to a County, District, or State Convention, and only such legal and qualified voters shall be elected as Delegates to County, District and State Conventions; provided, however, that

in addition to the qualifications provided herein the governing Republican Committee of each State, shall have the authority to prescribe additional qualifications not inconsistent with law. Such additional qualifications shall be adopted and published in at least one daily newspaper having a general circulation throughout the State, such publication to be at least ninety (90) days before such qualifications shall become effective.

(m) No Delegates shall be deemed eligible to participate in any convention to elect Delegates to the said National Convention, who were elected prior to the date of the issuance of the Call for such National Convention.

(n) District Conventions shall be composed of Delegates who are legal and qualified voters therein, and Delegates to State Conventions shall be qualified voters of the respective districts which they represent in said State Conventions. Such Delegates shall be apportioned among the counties, parishes, and cities of the State or District having regard to the Republican vote therein.

Rule No. 32

Participation in a Republican primary, caucus, any meeting or convention held for the purpose of selecting Delegates to a County, District, State or National Convention shall in no way be abridged for reasons of race, religion, color or national origin. The Republican State Committee or governing committee of each State shall take positive action to achieve the broadest possible participation in party affairs.

Rule No. 33

No State shall elect a greater number of persons to act as Delegates and Alternates than the actual number of Delegates and Alternates respectively to which they are entitled under the Call, and no unit of representation may elect any Delegate or Delegates, or their Alternates, with permission to cast a fractional vote.